

BRB No. 97-1457 BLA

CLAUDE COOTS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
RIVER PROCESSING, INCORPORATED)	
)	
and)	
)	
PARGAS, INCORPORATED)	DATE ISSUED:
)	
Employers-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Modification of Thomas F. Phalen, Jr.,
Administrative Law Judge, United States Department of Labor.

Claude Coots, Viper, Kentucky, *pro se*.

Eric R. Collis (Lynch, Cox, Gilman & Mahan), Louisville, Kentucky, for
employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order on
Modification (96-BLA-1132) of Administrative Law Judge Thomas F. Phalen, Jr., denying
benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine
Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The

¹Claimant is Claude Coots, the miner, who filed a claim for benefits on May 4, 1994.
Director's Exhibit 1. This claim was administratively denied on October 13, 1994 and claimant filed
an appeal on September 25, 1995 which was determined to be a request for modification. Director's
Exhibits 18, 19.

administrative law judge found that claimant established ten years of qualifying coal mine employment but failed to establish either the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c), and thus failed to establish either a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. § 725.310. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on appeal.²

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*. Additionally, all elements of entitlement must be established by a preponderance of the evidence. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence or record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Pursuant to Section 725.310, claimant may, within a year of a final order, request modification of the order. Modification may be granted if there are changed circumstances or there was a mistake in a determination of fact in the earlier decision. *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 16 BLR 1-71 (1992), modifying 14 BLR 1-156 (1990); *Wojtowicz v. Duquesne Light Co.*, 12

²We affirm the administrative law judge's findings regarding the length of claimant's coal mine employment as favorable to claimant and unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

BLR 1-162 (1989); *O’Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, has held that once a request for modification is filed, no matter the grounds stated, if any, the administrative law judge has the authority, if not duty, to reconsider all the evidence for any mistake of fact or change in conditions. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994). The instant claim was initially denied because claimant failed to establish the existence of pneumoconiosis or total respiratory disability. Director’s Exhibit 18.

Upon considering modification pursuant to Section 725.310, the administrative law judge, in the instant case, properly noted that claimant did not submit any additional evidence to establish a change in conditions. *Nataloni, supra*; Decision and Order at 5. The administrative law judge then correctly considered all of the evidence of record to determine if claimant established a mistake in a determination of fact. *Worrell, supra*; *Nataloni, supra*; Decision and Order at 5. Pursuant to 20 C.F.R. §718.204(c)(1) and (2), the record contains one pulmonary function study and one arterial blood gas study, neither of which yielded qualifying results. Director’s Exhibits 12, 14. Further, there is no evidence of cor pulmonale with right sided congestive heart failure in the record. Consequently, the administrative law judge properly found that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(1)-(3).

Pursuant to 20 C.F.R. §718.204(c)(4), Dr. Wicker provided the only medical opinion which addresses the issue of total respiratory disability. Director’s Exhibit 13. In his report, Dr. Wicker opined that claimant retains the respiratory capacity to perform his usual coal mine employment. Director’s Exhibit 13. Thus, the administrative law judge properly concluded that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(4). *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986); *Perry, supra*. The administrative law judge is empowered to weigh the evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson, supra*. Thus, we affirm the administrative law judge’s finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c). Because the administrative law judge considered all the relevant evidence of record and rationally determined that claimant has failed to establish total respiratory disability, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of modification and benefits.³ *Worrell, supra*; *Motichak v. Beth Energy Mines, Inc.*, 17 BLR 1-14 (1992); *Kott v. Director, OWCP*, 17 BLR

³The record contains x-ray evidence which is positive for the existence of pneumoconiosis that was not considered by the administrative law judge pursuant to 20 C.F.R. §718.202(a)(1). Employer’s Exhibit 2. However, a remand is not required as we affirm the administrative law judge’s finding that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c) based on a consideration of the entire record. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

1-9 (1992); *Anderson, supra*; *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order on Modification denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge